

1 Elaine A. Ryan (*Admitted Pro Hac Vice*)
2 Patricia N. Syverson (Bar No. 203111)
3 BONNETT, FAIRBOURN, FRIEDMAN
4 & BALINT, P.C.
5 2901 N. Central Avenue, Suite 1000
6 Phoenix, AZ 85012
7 Tel: (602) 274-1100
8 Fax: (602) 274-1199

9
10 Attorneys for Plaintiff Lorean Barrera

11 René P. Tatro (State Bar No. 78383)
12 Juliet A. Markowitz (State Bar No. 164038)
13 TATRO TEKOSKY SADWICK LLP
14 333 S. Grand Avenue, Suite 4270
15 Los Angeles, CA 90071
16 Tel: (213) 225-7171
17 Fax: (213) 225-7151

18 Attorneys for Defendant Pharmavite, LLC

19 [Additional Counsel Listed on Signature Page of Stipulation]

20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LOREAN BARRERA, On Behalf of
Herself and All Others Similarly
Situated and the General Public,

Plaintiff,

v.
PHARMAVITE, LLC, a California
limited liability company,

Defendant.

Case No. 2:11-cv-04153-CAS (AGrx)

~~PROPOSED~~ ORDER ON
STIPULATION OF PARTIES RE E-
DISCOVERY PROTOCOL

E-DISCOVERY PROTOCOL

The Court, upon all of the files, records, the parties' stipulation, the proceedings herein and for the reasons stated on the record, now makes and enters the following Order establishing a protocol for the preservation and production of electronically stored information ("ESI").

1 IT IS HEREBY ORDERED that:

2 Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, the
3 plaintiff and defendant in this Action (collectively, the "Parties," and singularly, a
4 "Party"), must comply with the following obligations in this litigation:

5 **I. Collection and Processing**

6 **A. Extraneous Files:** The following categories of electronic files may
7 be excluded from collection, review, and production:

8 1. ESI or data with file extensions that typically contain no
9 meaningful user-created data and/or cannot be reviewed in any
10 meaningful format, including but not limited to: ani; bat; c; cab;
11 cfg; class; dll; ex_; exe; fon; hlp; ico; icon; inf; ini; isu; java;
12 jpa; kqp; mpe; ocx; out; pcd; pcx; reg; sfw; sys; tag; ttf; and xp.
13 2. Software application files known to contain no meaningful user
14 created data that are listed on the Reference Data Set of the
15 National Software Reference Library, as maintained by the
16 National Institute of Standards and Technology ("NIST").

17 **B. De-duplication:** In order to reduce the volume of documents
18 reviewed and produced, the parties may de-duplicate electronic
19 documents within and across custodians or sources. For all non-email
20 electronic documents de-duplicated across custodians, the Custodian
21 and Other Custodians fields shall contain a list of every custodian who
22 possessed a copy of the document.

23 **II. Format for Production**

24 **A. Paper Documents in TIFF:** Production of paper documents will be
25 made as scanned images, provided in single page Group IV TIFF
26 format with endorsed Bates labels and confidentiality designations,
27 pursuant to the protective order entered in this case. The producing
28

1 Party will, to the extent practical, supply an electronic translation of
2 all text (typewritten or printed) contained on all images (OCR). Said
3 OCR files must be produced as page level text files and be named
4 consistently with its corresponding TIFF files. Custodian information
5 will be provided.

6 **B. Electronic Documents in TIFF:**

7 1. Production of e-mails, Word documents, Excel files,
8 PowerPoint, and PDF files will be made in TIFF format with
9 endorsed Bates labels and confidentiality designations, pursuant
10 to the protective order to be entered in this case. For TIFF files
11 generated from electronic documents, the producing Party shall
12 provide extracted text files (OCR files will be provided for
13 redacted documents) named consistently with its corresponding
14 TIFF Files. For those documents with reasonably accessible
15 metadata, the producing Party will provide the metadata and
16 coding fields for each document set forth in Exhibit A.
17 2. Text from documents originally stored in electronic form other
18 than e-mails, Word documents, Excel files, PowerPoint, or PDF
19 will be provided in TIFF format with endorsed Bates labels and
20 confidentiality designations, pursuant to the protective order to
21 be entered in this case. Custodian or source information will be
22 provided to the extent available. File name will be provided to
23 the extent that it is reasonably accessible electronically.

24 **C. Technical Specifications for All TIFF Format Files:** All TIFF
25 format files will conform to the following specifications:

26 1. All TIFF formatted files will be single page, black and white,
27 dithered (if applicable), Group IV TIFF at 300 X 300 dpi
28

1 resolution and 8 1/2 X 11 inch page size, except for documents
2 requiring different resolution or page size. The requesting Party
3 may request that specific .ppt or .xls files be produced in color.
4 The requesting Party shall bear the additional cost of producing
5 any color files.

6 2. A unitization file, in standard format (e.g., Summation .dii or
7 Concordance .opt) showing the Bates number of each page and
8 the appropriate unitization of the documents, including the
9 begin and end of each document, must accompany each TIFF
10 production.

11 3. The Parties agree that, upon reasonable request, native files of
12 specific spreadsheet documents (that were not redacted for
13 production) will be provided after the requesting Party has had
14 an opportunity to review the TIFF images of the spreadsheet
15 document. After ensuring the preservation of an unaltered copy
16 of a document, the producing Party may, at its discretion, alter
17 the native file to add bates label and confidentiality information
18 to the header or footer portion of the native file prior to its
19 production. The producing Party may not, however, alter the
20 native file in any way that would change, move, or otherwise
21 disrupt any of the information contained in the file. The
22 producing Party's election not to add confidentiality information
23 is in no way a waiver of the confidential status of the document,
24 which can be ascertained by inspecting the TIFF image for the
25 document. The native file will be named in a manner
26 corresponding to the bates number of the first page of the
27 corresponding TIFF document and the native file will be
28

1 included in the unitization file provided with the production.
2 The requesting Party shall bear the additional cost of producing
3 any native file documents.

4 **D. E-mail Attachments:** The Parties must produce all files attached to
5 each e-mail they produce to the extent the attachments are relevant,
6 reasonably accessible, and not protected from disclosure by the
7 attorney-client privilege or work-product doctrine. To the extent a
8 Party produces electronic documents attached to e-mails, a Party will
9 produce the metadata for those attached electronic documents as
10 outlined in paragraphs B1 and B2 above.

11 **III. Privilege Logs:** If a Party withholds responsive ESI based on a claim of
12 privilege, that Party must provide a privilege log in compliance with Fed. R.
13 Civ. Pro. 26(b)(5)(A).

14 **A. E-mail:** With respect to email chains, in addition to all other
15 information required to be listed in a privilege log to substantiate a
16 privilege claim, the privilege log must also either:

17 1. include a separate entry for each email in the chain which must
18 include (a) all of the "Author" and "Addressee" fields
19 populated by the person(s) listed in the "From" and "To" lines,
20 respectively in the email for which privileged or protection is
21 claimed, (b) all "Recipients" field listing any additional persons
22 who are listed as recipients in the email (including any copies
23 on the email for which privilege or protection is claimed and
24 any persons whose names appear in the email), and (c) either
25 the subject of or "re" line of each email within the string; or
26 2. include a single entry for an entire email chain to the extent
27 practical and technologically feasible which will include (a) the
28

1 “Author” and “Addressee” fields populated by the person(s)
2 listed in the “From” and “To” lines, respectively, in the first-in-
3 time email in the chain for which privilege or protection is
4 claimed, (b) with a “Recipients” field listing any additional
5 persons who are listed as recipients in the email chain
6 (including any copies on the original email for which privilege
7 or protection is claimed and any persons whose names appear
8 in subsequent emails in the chain to the extent those subsequent
9 e-mails are redacted or withheld), and (c) either the subject of
10 or “re” line of the last-in-time email in the chain for which
11 privilege or protection is claimed to the extent that e-mail is
12 redacted or withheld.

13 Email attachments must be listed in log entries, separate from their
14 cover emails, but in a manner that makes clear which attachments
15 accompany each respective e-mail. Nothing in this Protocol justifies
16 or may result in an entire email string being designated as privileged
17 when other emails within the string do not contain privileged
18 information.

19 **B. Timing of Production:** The Parties agree that a privilege log will be
20 produced no later than forty five (45) days after the Producing Party
21 completes its production of ESI. Because of the de-duplication
22 procedures, a privileged document may be logged only one time, even
23 though it may exist in the files of multiple custodians. Any requested
24 changes in the foregoing timelines will be discussed among the Parties
25 and will not constitute a waiver of any privilege or protection.

26 **C. Production of Related Documents:** If a non-privileged document
27 within the Privilege ESI is related to another document, the Producing
28

1 Party will produce all related documents (in whole and part) which are
2 not privileged (redacting the privileged documents as necessary). The
3 purpose of this section is to minimize the removal of documents from
4 the Production ESI, in order to remove only that part of the document
5 which is necessary to shield the information subject to the asserted
6 privilege.

7 **D. Post-Litigation Communications with Counsel:** The Parties need
8 not include the communications of the type listed below on a privilege
9 log where the communication occurred after the filing of this action.
10 This section does not excuse the production of non-privileged
11 communications. Rather, it only excuses the recording of certain
12 actually privileged communications on a privilege log.

13 1. Communications amongst outside counsel for the defendant.
14 2. Communications between outside counsel and any employee of
15 the defendant.
16 3. Communications from General Counsel for the defendant,
17 Christine Burdick-Bell, to any employee of Defendant.
18 4. Communications between counsel for the Plaintiff and Plaintiff.

19 **IV. Continuing Obligations**

20 **A. Meet and Confer:** To expedite discovery of relevant electronic
21 evidence and reduce costs, the Parties will discuss and attempt in good
22 faith to resolve all issues before bringing them to the Court. This
23 responsibility shall be continuing, unless otherwise ordered by the
24 Court.

25 **B. Additional Agreements:** Prior to the production of any documents,
26 the Parties shall enter a stipulated order relating to the "clawback" of
27
28

1 privileged documents. The parties may execute further agreements
2 relating to testing or sampling procedures as appropriate.

3 **C. Search Terms:** The parties have met and conferred about the
4 selection of search terms. The parties have reached agreement
5 regarding search terms, which are set forth in Exhibit B.

6 **V. All Parties:** The obligations created by this stipulated order apply to all
7 Parties to this Action. This Order shall continue in full force and effect until
8 order of the Court or until this litigation is terminated by a final judgment.

9
10 Dated: June 11, 2012

Alicia G. Rosenberg

ALICIA G. ROSENBERG
UNITED STATES MAGISTRATE JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28